

EMPLOYMENT APPEALS BOARD DECISION
2014-EAB-0403

Affirmed
Disqualification

PROCEDURAL HISTORY: On December 4, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision #95337). Claimant filed a timely request for hearing. On February 12, 2014, ALJ Vincent conducted a hearing, and on March 7, 2014 issued Hearing Decision 14-UI-11981, affirming the Department's decision. On March 15, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted written argument to EAB. Claimant failed to certify that she provided a copy of her argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). The argument also contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented claimant from offering the information during the hearing as required by OAR 471-041-0090. We considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) Capital Property Management employed claimant from October 5, 2009 to October 24, 2013.

(2) Claimant worked as a leasing consultant at the time her employment ended. Claimant lived and worked for the employer in or near Portland, Oregon. Claimant had arthritis. Her arthritis did not affect her ability to work at the time her employment ended.

(3) On October 18, 2013, claimant quit a job with C&R Real Estate because it stopped providing her with free housing in exchange for work, and it changed her work hours so they conflicted with her hours working for the employer. Claimant earned \$3,033 gross per month working for the employer, which was more than she earned working for C&R Real Estate.

(4) Because claimant no longer received free rent from C&R Real Estate, she had an additional expense of \$800 per month for rent. Claimant's other monthly expenses included \$150 for credit card debt, \$400

for a car payment, \$78 for utilities, \$200 for a student loan, \$60 for car insurance, \$70 for an adult child's health insurance, \$200 for food, and \$16 for clothing.

(5) Claimant had friends and family, including her mother, who lived in Ohio. Claimant's mother was ninety years old, self-sufficient, and did not need claimant to take care of her at the time claimant's employment ended.

(6) Claimant had the same expenses in Ohio, but believed the cost of living would be lower there. She did not have an offer of work in Ohio.

(7) On October 24, 2013, claimant voluntarily left work to move to Ohio.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ, and conclude claimant voluntarily left work without good cause.

A claimant who quits work voluntarily is disqualified from the receipt of benefits unless she proves, by a preponderance of the evidence, that she had good cause to quit work when she did. ORS 657.176(2)(c); *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000). Quitting work with good cause includes quitting due to compelling family reasons. OAR 471-030-0038(5)(g) (August 3, 2011). OAR 471-030-0038(1)(e)(B) provides, in relevant part, that "compelling family reasons" exist when, among other things, the illness or disability of an immediate family member necessitates a claimant's care. Otherwise, "good cause" is defined, in relevant part, as a reason of such gravity that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have no reasonable alternative but to leave work. OAR 471-030-0038(4). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P2d 722 (2010). Claimant had arthritis, a permanent or long-term "physical or mental impairment" as defined at 29 CFR §1630.2(h). A claimant with that impairment who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such impairment would have continued to work for her employer for an additional period of time.

At hearing, claimant asserted she quit work because she could not afford to pay rent and her other expenses, and because she wanted to live in Ohio near her mother. However, claimant failed to show that the cost of working for the employer exceeded the remuneration she received, or that quitting work otherwise improved her situation. Claimant had the same expenses in Ohio as in Oregon, but no longer had earnings from the employer. To the extent claimant quit work to improve her financial situation by moving to Ohio, claimant failed to establish that no reasonable and prudent person with arthritis would have continued to work for her employer for an additional period of time.

To the extent claimant left work to live near her mother, claimant did not show she had good cause to quit. Although claimant's mother was ninety years old, claimant did not assert or show that her mother had an illness or disability that "necessitated" claimant's care. Claimant therefore did not quit work due to "compelling family reasons" under OAR 471-030-038(1)(e), and did not quit work for good cause under OAR 471-030-0038(5)(g). Nor did claimant show that her desire to live near her mother because her mother might need her assistance in the future was such that no reasonable and prudent person with arthritis would have continued to work for her employer for an additional period of time.

Claimant quit work without good cause. Claimant therefore is disqualified from receiving unemployment insurance benefits based on this work separation.

DECISION: Hearing Decision 14-UI-11981 is affirmed.

Tony Corcoran and D. E. Larson;
Susan Rossiter, not participating.

DATE of Service: March 31, 2014

NOTE: You may appeal this decision by filing a Petition for Judicial Review with the Oregon Court of Appeals within 30 days of the date of service listed above. *See* ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310, or visit the website at <http://courts.oregon.gov/OJD/OSCA/acs/records/AppellateCourtForms.page>.

Note: The above link may be broken due to unannounced changes to the Court of Appeals website, in which case you may contact the Appellate Records at (503) 986-5555.